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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

LEONARD S. MACHTINGER, Plaintiff and Appellant, v. AVENUE OF THE STARS, LLC et al., Defendants and Respondents.	B164741 (Los Angeles County Super. Ct. No. SC068492)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

Kenoff & Machtinger and Leonard S. Machtinger for Plaintiff and Appellant.

Bragg, Serota & Kuluva and Christina L. Young for Defendants and Respondents.

Plaintiff and appellant Leonard Machtinger appeals a jury verdict in favor of defendants and respondents Avenue of the Stars, LLC and Divco West Group, LLC. Machtinger contends that the jury verdict in this slip and fall lawsuit should be reversed because of defendants' misconduct, incorrect evidentiary rulings, improper restriction of rebuttal testimony, erroneously declined jury instructions, and judicial bias. He also argues that the evidence was insufficient to support the verdict and that the trial court should have rejected all or parts of defendants' cost bill. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Machtinger fell on the steps of an office building on November 27, 2000, causing a broken femur that required surgical repair. He sued the companies that owned and managed the building, alleging that they were negligent by permitting water to pool on the stairs, failing to remove pooled water or warn pedestrians about it, and not placing a handrail in the center of the stairs.

The central question at trial was whether Machtinger slipped on wet stairs or simply misstepped. Machtinger testified that he slipped in a puddle of water and offered a security guard's testimony that the stairs were often wet. Machtinger's safety engineer, Brad Avrit, testified that he believed that Machtinger fell because his foot slipped on a wet terrazzo inset—a three-inch-wide strip of marble composite that ran across the length of the step. Avrit opined that the steps were unsafe; that terrazzo should not have been inlaid on the steps because it is slippery when wet; that the steps were sloped so that water pooled on them rather than running off; and that intermediate handrails should have been installed on the staircase. On cross-examination, Avrit conceded that by measurements he took in 2002, the steps—including the terrazzo inlays—met prevailing industry standards for slip resistance, even when wet. Avrit also admitted that in the absence of other contaminants, water on the steps would not diminish their slip resistance. Avrit reconciled his opinion that the steps were slippery with the contrary results of his slip resistance tests by explaining that the surface—which he assumed to be

polished terrazzo—would probably have lost its polish over time, increasing its slip resistance. He maintained that the slip resistance for polished terrazzo was unacceptably low for exterior stairs.

The defendants presented evidence that they were not negligent and that Machtinger's fall was not caused by negligence. Safety engineer Ned Wolfe testified that he too had performed slip resistance tests in 2002 on the steps on which Machtinger fell. Based on those tests, Wolfe opined that the stairway tread surfaces offered "exemplary slip resistance," whether wet or dry. Wolfe concluded that there were no dangerous conditions with respect to the dimensions or design of the stairway. He testified that because of the high slip resistance of the stairs it was unlikely that Machtinger had slipped. Wolfe also opined that the sloping identified by Avrit was insignificant because the stairs were designed for wet conditions.

Kinesiologist James Kent opined that Machtinger fell forward and landed on his bent knee, causing his kneecap to act as a wedge and fracture his femur. Kent testified that Machtinger's fracture pattern was consistent not with slipping but with overstepping: Machtinger had most likely fallen forward after stepping over the front edge of a step. The defendants also presented evidence that Machtinger had stated to paramedics and the emergency room physician that he had been injured when he "tripped" or "missed a step," and that the security guard who assisted Machtinger after the fall did not see water on the stairs.

The jury found that neither the defendants nor their agents had been negligent in the ownership or management of the office building. The trial court entered judgment in defendants' favor and awarded them $21,144.45 in costs. Machtinger appealed the judgment and the costs award.

DISCUSSION

I. Witness Payment

Machtinger learned from defendants' post-trial costs bill that they had paid, or agreed to pay, $1,000 to Sam Nicassio, a former employee of Divco West who was subpoenaed by Machtinger. Defendants explained that Nicassio refused to appear at trial unless he was paid a witness fee. Machtinger contends that this payment of this fee requires reversal of the judgment.

Compensating witnesses in excess of the fees set by statute is not encouraged. (*Crutchfield v. Davidson Brick Co.* (1942) 55 Cal.App.2d 34, 37 ["The practice of paying witnesses sums greater than the statutory fees on the theory that they are being compensated for their time or that they are being prevented from suffering financial loss is not to be commended"].) Machtinger, however, has provided no authority to support his argument that the remedy for such a payment is reversal of the judgment. Even in *Crutchfield*, the decision on which he relies to establish the impropriety of the payment, the court refused to grant a new trial, even though there—unlike here—there was evidence that the witness had been paid to give false testimony. (*Id*. at pp. 38-39.)

Machtinger attempts to equate his failure to question Nicassio about compensation with a complete denial of the right of cross-examination.[1] We are not persuaded that absent deception to conceal the payment, a party's failure to inquire into a classic subject of cross-examination because the party did not know it would be fruitful is analogous to a tribunal's independent solicitation and receipt of evidence without a hearing. (See *Fremont Indemnity Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965 [denial of right of cross-examination and reversible error for workers' compensation judge to discuss case with independent medical examiner and receive additional evidence after the case was submitted].)

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[1] Machtinger cross-examined Nicassio pursuant to Evidence Code section 776.

Finally, the judgment may not be reversed on this ground because Machtinger has not demonstrated prejudice. Machtinger sets forth his ideal testimony from Nicassio and speculates that "perhaps" Nicassio would have testified that way if he had not been compensated, but prejudice must be affirmatively established and is not presumed. (*Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069; Code Civ. Proc., § 475.)

II. Evidentiary Rulings

A. Pogosov Testimony

The trial court sustained a hearsay objection when Machtinger attempted to testify to statements made by Ashot Pogosov, the security guard who aided Machtinger after his fall. Later in the trial, when Pogosov failed to appear, the court permitted his deposition to be read to the jury but excluded passages based on evidentiary objections. Machtinger contends that Pogosov's statements after the fall were admissible as spontaneous utterances (Evid. Code, § 1240) and that both the statements and the excluded portions of the deposition were authorized admissions. (Evid. Code, § 1222.) We review the evidentiary rulings for an abuse of discretion. (*City of Ripon v. Sweetin* (2002) 100 Cal.App.4th 887, 900 (*Ripon*).)

Machtinger has not demonstrated that Pogosov's statements on the night of the incident were admissible under either exception. He presented no evidence that Pogosov was purporting to "narrate, describe, or explain an act, condition, or event" he had perceived and that the statements were "made spontaneously while [Pogosov] was under the stress of excitement caused by such perception" (Evid. Code, § 1240) when he made the statements to which Machtinger attempted to testify. He also failed to show that Pogosov had the express or implied authority of the defendants to communicate on their behalf with respect to the subject matter of his statements. (Evid. Code, § 1222.) As the elements of the spontaneous utterances and authorized admissions statutes were not satisfied, the trial court did not abuse its discretion by excluding this evidence.

Machtinger has also failed to establish as authorized admissions the excluded portions of Pogosov's deposition in which he testified that the security guards "probably talked about" wetness on the stairs "as far as it might have been a safety issue"; that when the stairs were wet he might have told other guards that someone might fall; and that he did not remember whether he had ever heard anyone discussing wetness on the stairs, but it was common knowledge that the sprinklers wet the stairs at night.[2] He asserts that Pogosov, a security guard employed by a vendor, was defendants' agent because "he had ready access to [the building's] common areas, reporting procedures had been approved by management, the guard reports went to management, [and] the guards controlled the elevators" after hours. Machtinger concludes that Pogosov's statements while performing his job were therefore authorized admissions. But Evidence Code section 1222 requires that the declarant be "authorized by the party to make a statement or statements for him concerning the subject matter of the statement." As Machtinger did not establish that defendants authorized Pogosov to make statements on the subjects addressed in the excluded deposition excerpts, he has not established that the ambiguous and speculative statements were authorized admissions.

[2] Machtinger argues that three additional passages were authorized admissions improperly excluded as hearsay, but he has misstated the trial court's evidentiary rulings. The court excluded Pogosov's testimony that after the incident Machtinger "said something that he lost his footing and he fell down. But as far as why and when and how, I really don't remember. I'm sorry," and his responses to two questions about noting wetness or puddles on the stairs in his daily reports because the questions had been previously asked and answered, and sustained a relevance objection to testimony concerning the guards' control over the elevators and access to the upper floors of the building after business hours. Machtinger challenges none of these reasons for excluding the testimony.

B. Medical Record

Machtinger claims that the transcribed notes of the emergency room physician who treated him after his fall were improperly admitted under Evidence Code section 1271. This provision excepts from the hearsay rule documents that were created in the regular course of business and at or near the time of the act, condition, or event they are offered to prove, as long as a qualified witness testifies to the identity and mode of their preparation and the sources of information and method and time of preparation were such as to indicate their trustworthiness. (Evid. Code, § 1271.)

Machtinger argues that under this statute there was an insufficient foundation for the emergency room report because the original tape from which the document was transcribed was not produced so that the accuracy of the transcription could be tested. Machtinger's sole authority for his contention that a transcribed document must be compared to the original tape before being admitted as a business record, *Luthringer v. Moore* (1948) 31 Cal.2d 489, 501-502, merely provides that medical records may not be admitted as business records without testimony concerning their mode of preparation. *Luthringer* is inapposite here because there was testimony that the treating physician dictated the report the day he treated Machtinger.

Machtinger argues that the trustworthiness element of Evidence Code section 1271 was not met because of four errors in the document: statements as to his marital status, insulin dependence, and heart condition, and his purported admission to the physician that he missed a step. Based on his own testimony that these statements were inaccurate, Machtinger concludes that the report was untrustworthy and inadmissible. The trial court, however, received testimony that the emergency room report was created by the physician the day he treated Machtinger, and implicitly concluded that the report's trustworthiness was sufficiently established by this evidence of the sources of information and method and time of its preparation. (Evid. Code, § 1271, subd. (d).) Machtinger may, and did at trial, dispute the accuracy of certain statements in the report, but he has not shown that its admission as a business record was an abuse of discretion.

Machtinger also argues that the document was inadmissible under the business records exception because the statement that Machtinger had missed a step "is not relevant to the treatment of a broken leg and therefore any purported statement of the patient as to the fall was not made in the ordinary course of business." This argument confuses the admissibility of a document under the business record exception with the admissibility of individual statements within that document. Although statements of the cause of a patient's injuries are not made admissible through inclusion in medical records (see *People v. Williams* (1960) 187 Cal.App.2d 355, 365), medical records containing such statements may nonetheless be admitted as business records. "[I]f a proper foundation is laid, the fact that the records are hearsay and that the particular nurse, doctor or person making the record has not been called, does not preclude their admission. Nor does the fact that they contain inadmissible matter prevent their admission. Such parts should be omitted or proper instruction of the court given concerning them." (*People v. Gorgol* (1953) 122 Cal.App.2d 281, 300 [prior version of business records exception].) Machtinger has not established any abuse of discretion in admitting the emergency room report. (*Ripon*, *supra*, 100 Cal.App.4th at p. 900.)

III. Restriction on Rebuttal Testimony

Because one of Machtinger's expert witnesses, John Brault, did not testify in Machtinger's case-in-chief, the trial court refused to permit him to offer opinions on rebuttal beyond criticisms of the testimony of defendants' expert witnesses. Machtinger contends that the court should have permitted Brault to present his full range of opinions. The trial court is vested with discretion to determine the scope of rebuttal, and its ruling will not be disturbed unless a clear abuse of discretion is shown. (*Diamond Springs Lime Co. v. American River Constructors* (1971) 16 Cal.App.3d 581, 604; *Ray v. Jackson* (1963) 219 Cal.App.2d 445, 454.)

A party may not withhold evidence from his or her case-in-chief and introduce it on rebuttal. (*Lipman v. Ashburn* (1951) 106 Cal.App.2d 616, 620.) Machtinger

characterizes *Lipman* as barring the presentation on rebuttal of "evidence that was essential to the plaintiff's case-in-chief," and attempts to distinguish the present case by arguing that Brault's testimony was not essential to prove negligence. Machtinger reads *Lipman* too narrowly. "Essential" evidence, as the term is used in *Lipman*, is evidence which pertains to a matter on which the plaintiff bears the burden of proof, not evidence that would itself be necessary to prove liability: "[A] party who has the affirmative may not reserve a portion of his evidence until the opposite party has exhausted his to negative that offered in the first instance, and if he does so, the court may refuse to allow him to come in and make out his case after the defendant rests." (*Ibid*.) Therefore, in *Lipman*, a personal injury action resulting from a collision between a truck and a motorcycle, the plaintiff had no right to withhold from his case-in-chief evidence that the defendant's truck had failed to stop before entering the intersection, then present that evidence on rebuttal. (*Ibid*.) Here, the questions to which objections were sustained concerned Brault's research, analysis, and opinion as to the cause of Machtinger's fall. Because Machtinger bore the burden of proving that his injury was caused by the defendants' negligence, the trial court did not abuse its discretion by disallowing that testimony and restricting Brault to true rebuttal evidence: criticism of the testimony of the opposing expert witnesses. (*Ibid*.)

Machtinger also contends that Brault's testimony should not have been curtailed because the defendants did not claim surprise or prejudice. Although the trial court has discretion to permit a party to revisit his or her case-in-chief on rebuttal in the absence of surprise or prejudice to the other party (*Lilley v. Key System Transit Lines* (1955) 136 Cal.App.2d 737, 738-739), it does not follow that such evidence should or must be received on rebuttal whenever no prejudice or surprise would result. To the contrary, parties are limited on rebuttal to "rebutting evidence only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case." (Code Civ. Proc., § 607.) Machtinger has not established an abuse of discretion.

IV. Refusal to Give Res Ipsa Loquitur Instructions

Machtinger claims that he was entitled to three res ipsa loquitur instructions, BAJI Nos. 4.00, 4.02, and 4.03. "A party is entitled upon request to correct, nonargumentative instructions on every theory of the case advanced by him which is supported by substantial evidence." (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 572.)

When res ipsa loquitur instructions are given, the jury is required to assume that the incident was proximately caused by defendants' negligence unless contrary evidence is submitted. (Evid. Code, § 604; *Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, 826 (*Brown*).) Accordingly, res ipsa loquitur instructions are appropriate only when an accident is of the kind that does not ordinarily happen unless there was negligence; was caused by an agency over which the defendants had the exclusive right of control; and was not due to any voluntary action or contribution of the plaintiff. (*Brown*, at pp. 825-826.) Res ipsa loquitur instructions are rarely appropriate in slip and fall cases because "Experience teaches that slips and falls are not so likely to be the result of negligence as to justify a presumption to that effect. As Prosser and Keeton explain, 'there are many accidents which, as a matter of common knowledge, occur frequently enough without anyone's fault. . . . [A]n ordinary slip and fall . . . will not in [itself] justify the conclusion that negligence is the most likely explanation; and to such events res ipsa loquitur does not apply.' [Citation.] This is true even when the fall is associated with a slippery object, because objects all too often appear on floors without sufficient explanation. For this reason, 'something slippery on the floor affords no res ipsa case against the owner of the premises, unless it is shown to have been there long enough so that he should have discovered and removed it.' [Citation.]" (*Id*. at p. 826.)

Machtinger contends that res ipsa loquitur instructions should have been given because "it was common knowledge among the guards—Respondents' agents—that water came onto the staircase where the accident occurred from the sprinklers. [Citations.] There were residues on the steps indicating that there were contaminants (lubricants) in the water on the steps, which had been caused by Respondents' negligence

in not preventing the sprinklers from sending water onto the steps—and they did nothing to remedy the situation or to warn pedestrians." This evidence did not establish that a fall such as Machtinger's is one that does not ordinarily happen in the absence of negligence or that the fall was not caused by any voluntary action or contribution on his part. (See *Brown*, *supra*, 4 Cal.4th at pp. 825-826.) The trial court did not err when it refused to instruct the jury with BAJI Nos. 4.00, 4.02, and 4.03.

Even if the instructions should have been given, Machtinger did not suffer any prejudice from their omission. Although he claims harm from being deprived of the shift in the burden of producing evidence that accompanies the res ipsa loquitur presumption (Evid. Code, § 646, subd. (b)), there could be no prejudice because the defendants satisfied the burden of production, shifted or not, when they produced evidence that would support a finding that they were not negligent and that any negligence on their part was not a proximate cause of Machtinger's fall. The production of evidence that would support a finding of no negligence or no proximate causation dispels the res ipsa loquitur presumption, leaving the trier of fact to determine whether the defendant was negligent by weighing the evidence presented. (Evid. Code, §§ 604, 646, subd. (c); *Brown*, *supra*, 4 Cal.4th at p. 826.) Because the jury would have determined whether the defendants were negligent "without regard to the presumption, simply by weighing the evidence" (*Brown*, at p. 826) regardless of whether res ipsa loquitur instructions were given, it is not reasonably probable that a result more favorable to Machtinger would have been reached if BAJI Nos. 4.00, 4.02, and 4.03 had been given. (*Soule v. General Motors Corp.*, *supra*, 8 Cal.4th at p. 580.)

V. Substantial Evidence

Machtinger contends that the evidence was insufficient to support the defense verdict. "By asserting that there was no substantial evidence to support the jury's verdict for respondent, appellant is in fact claiming that he proved negligence as a matter of law, and such is not established unless the only reasonable hypothesis is that negligence

existed." (*Horn v. Oh* (1983) 147 Cal.App.3d 1094, 1099.) In order for us to reverse the judgment on this ground, we would have to hold that "it would have been impossible from all the evidence for the jury to find" that the defendants were not negligent or that Machtinger had not met his burden to prove the defendants were negligent. (*Byrum v. Brand* (1990) 219 Cal.App.3d 926, 947.)

Machtinger claims that the evidence was insufficient because the testimony of two of defendants' experts was speculative and conjectural. He argues that Wolfe's slip resistance tests could not constitute substantial evidence supporting the verdict because they were performed 14 months after Machtinger's fall; because there was no evidence that Wolfe's application of water to the steps replicated the conditions of the steps on the night of the fall; and because he did not attempt to duplicate contaminants allegedly on the steps. Under Machtinger's standard, no independent testing of slip resistance could have been admissible—including that of his own expert—because there was no evidence of the composition of the contaminants, if any, in the water that was allegedly on the steps when Machtinger fell. The rule is not so rigid. "The standard that must be met in determining whether the proponent of the experiment has met the burden of proof of establishing the preliminary fact essential to the admissibility of the experimental evidence is whether the conditions were substantially identical, not absolutely identical." (*Culpepper v. Volkswagen of America, Inc.* (1973) 33 Cal.App.3d 510, 521; see also *People v. Bradford* (1997) 15 Cal.4th 1229, 1326.) Wolfe's expert opinion was not rendered speculative or conjectural because his slip resistance tests did not, and could not, perfectly replicate the conditions at the time of Machtinger's fall.

Machtinger also attacks Wolfe's testimony because it "challenged common experience" concerning slip resistance: Wolfe opined that adding dirt to water may increase slip resistance, while Machtinger's expert, Avrit, opined that addition of substances to water makes a surface more slippery. With this argument Machtinger has identified a disputed issue of fact upon which two expert witnesses disagreed, not a basis for disregarding or excluding an expert's testimony.

Next, Machtinger argues that Kent's expert opinion that Machtinger fell by overstepping rather than slipping is conjectural because "there is no apparent connection between the fracture pattern and whether Appellant slipped, tripped, or over-stepped the step." This argument assumes its conclusion: Machtinger argues that Kent's opinion that Machtinger's fracture pattern was consistent with overstepping and not with a slip should be disregarded for lack of support, but Kent's opinion can only be considered unsupported if one discounts Kent's testimony. Kent, a forensic kinesiologist, examined preoperative and postoperative X-rays and CT scans of Machtinger's injury; reviewed Machtinger's medical records and deposition transcripts; and examined photographs and measurements of the stairs on which he fell. Kent concluded that the nature of Machtinger's injury—in which his femur was broken by the impact of his kneecap against it—meant that Machtinger had fallen forward and landed on his bent knee. Based upon his training and experience in kinesiology and gait studies, Kent concluded that this injury was not consistent with a slip on a flat surface. Instead, Machtinger's injury suggested the placement of a foot too far forward over the front edge of a step, causing Machtinger to pitch forward and land on his knee. Kent testified that the basis for this opinion was Machtinger's fracture pattern and the analysis of human motion in stair descent, including the placement of foot pressure during descent. Kent's testimony was neither conjectural nor unsupported.

Although Kent and Wolfe agreed that it was possible that Machtinger had slipped, this does not mean that their opinions were speculative or inadmissible. Moreover, even if the experts' opinions were to be disregarded as Machtinger advocates, reversal would not be warranted because Machtinger did not prove negligence as a matter of law. "'Only where no fact is left in doubt and no deduction or inference other than negligence can be drawn by the jury from the evidence can the court say, as a matter of law, that negligence is established. . . . .' [Citation.]" (*Horn v. Oh*, *supra*, 147 Cal.App.3d at p. 1099.) As Machtinger has neither contended nor established that he met this high standard, he is not entitled to reversal of the defense verdict on this ground.

VI. Alleged Judicial Bias

Judicial misconduct merits reversal of a civil judgment when it has been shown to be prejudicial as a miscarriage of justice, or intentional and sufficiently heinous to warrant reversal as a punishment or because it reveals bias on the part of the court. (*Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 Cal.App.4th 1305, 1314-1315.) Reeling off a list of unexplained and undiscussed citations to the reporter's transcript, Machtinger seeks a new trial because the trial court was "repeatedly impatient" and "showed his exasperation and annoyance" with Machtinger's trial counsel, "jump[ing] to conclusions to disparage" him. We have reviewed each of the passages in the transcript listed in Machtinger's opening brief. Although the court criticized counsel at some junctures, Machtinger has not established a miscarriage of justice, intentional or heinous misconduct, or bias on the part of the trial court. Nor does the record in this case reveal conduct comparable to that in *Etzel v. Rosenbloom* (1948) 83 Cal.App.2d 758, *Davis v. Pezel* (1933) 131 Cal.App. 46, or *Podlasky v. Price* (1948) 87 Cal.App.2d 151, disapproved on another ground in *Gagne v. Bertran* (1954) 43 Cal.2d 481, 488, fn. 5.

VII. Costs

Machtinger opens the section of his opening brief entitled, "Respondents' costs bill should have been rejected," by noting the requirement that costs be reasonable and the responsibility of the party claiming the costs to establish their reasonableness. (Code Civ. Proc., § 1033.5, subd. (c)(2), (3); *Perko's Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 244-245.) The remainder of the argument is a list of four claims Machtinger made in the trial court: (1) he asked the court to exercise its discretion to reject the costs bill in its entirety—or at least the expert witness costs—as punishment for the $1,000 witness fee to Nicassio, but the court struck only the $1,000 fee to Nicassio and $2,682.55 in other costs; (2) it was not possible to determine whether defendants' expert witness costs were reasonable, and the respondents did not "deal with"

that issue; (3) defendants sought reimbursement for service charges to obtain documents concerning Machtinger's medical care costs, but Machtinger produced those documents himself during discovery; and (4) some of the charges appeared duplicative, and although the defendants claimed they were not duplicative, they provided no evidence to support that assertion.

Machtinger does not specify in his opening brief any error or abuse of discretion in the trial court's cost ruling, much less offer legal argument for the reversal of the cost award in light of the applicable standard of review. Only in his reply brief does Machtinger assert that it was an abuse of discretion for the trial court to have failed to strike all costs, or at least the expert witness fees, as punishment for the Nicassio matter and for the failure to provide any basis for determining if the expert witness fees were reasonable. The reply brief ignores the remaining items listed in the opening brief and fails to offer pertinent authority or full legal argument. We would be entitled to reject Machtinger's arguments based on this meager briefing and the failure to provide a reporter's transcript from the hearing on the motion to tax costs. (*People v. Stanley* (1995) 10 Cal.4th 764, 793; *Pan Asia Venture Capital Corp. v. Hearst Corp.* (1999) 74 Cal.App.4th 424, 429, fn. 4; *Great Western Bank v. Converse Consultants, Inc.* (1997) 58 Cal.App.4th 609, 615.)

Considering Machtinger's contentions nonetheless, he has not shown error in the court's ruling. The trial court's determination of the reasonableness of a cost is "peculiarly within the trial court's discretion" and is reviewed for an abuse of that discretion. (*Baker-Hoey v. Lockheed Martin Corp.* (2003) 111 Cal.App.4th 592, 605.) "'A trial court's exercise of discretion will not be disturbed on appeal unless, *as a matter of law*, an abuse of discretion is shown -- i.e., -- where, considering all the relevant circumstances, the court has "exceeded the bounds of reason" or it can "fairly be said" that no judge would reasonably make the same order under the same circumstances. [Citations.]' [Citations.]" (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 480.) Machtinger has not offered any authority or argument why it would be an abuse of discretion for the trial court, having disallowed the $1,000 witness fee, to decline to strike

additional costs to punish the defendants for compensating Nicassio, and we cannot conclude that the court's decision exceeds the bounds of reason. With respect to the remaining items, the declaration of counsel and supporting documentation provide substantial competent evidence from which the trial court could reasonably conclude that these costs were necessary and reasonable. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 776; *Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1265-1267.) The court therefore had an adequate basis for allowing these costs, and its ruling was not an abuse of discretion.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

ZELON, J.

We concur:

PERLUSS, P. J.

JOHNSON, J.